

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

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CMA.No.3947 of 2004

JUDGMENT:

Feeling dissatisfied with the amount of Rs.62,000/- granted as compensation by the order dated 10.04.2001 in M.V.O.P.No.103 of 1998 on the file of the Chairman, Motor Accident Claims Tribunal-cum-III Additional District Judge, Guntur (for short, the Tribunal'), as against the claim of Rs.2,00,000/- laid under Sections 166 & 163-A of the Motor Vehicles Act, 1988 (for short, 'the Act'), for the death of one Bandaru Saraswathi, who was the wife of petitioner No.1 and mother of petitioner Nos.2 and 3, the instant appeal is preferred under Section 173 of the Act, seeking enhancement of compensation.

2. The appellants herein are the petitioners, while respondent Nos.1 and 2, who are the owner and insurer of the car bearing registration No. AP 7 T 3254, respectively, are respondent Nos.1 and 2, respectively, in the original petition, and respondent Nos.3 and 4, who are the owner and insurer of the lorry bearing registration No. AP 37 T 262, respectively, are respondent Nos.3 and 4, respectively, in the said original petition.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The facts in brief would show that on 17.11.1997 at 4.00, while the said Bandaru Saraswathi (deceased) along with some others was proceeding in a car bearing registration No. AP 7 T 3254 from Gannavaram to Guntur and when they reached Fathimanagar,

Pedaoutpalli, the driver of the car, who is no other than the husband of the deceased, drove it in a rash and negligent manner and dashed a stationary lorry bearing registration No. AP 37 T 262, due to which, she sustained injuries and died instantly. The petitioners, claiming that the deceased was a sales Supervisor-cum-Proprietrix of Revathi Textiles, Kothapet, Guntur, earning Rs.4,000/- per month, sought a total sum of Rs.2,00,000/- as compensation from respondent Nos.1 and 2, who are the owner and insurer of the car, respectively. Respondent Nos.3 and 4, who are the owner and insure of the lorry, respectively, were subsequently impleaded by the order dated 13.08.1999 in I.A.No.669 of 1999.

5. Respondent No.1 was set *ex parte*. Respondent No.2 opposed the claim, disputing the liability. Respondent No.3 filed counter seeking dismissal of the claim petition as the lorry was stationed, and the driver of the car, without observing the same, has driven the car in a rash and negligent manner and caused the accident. Respondent No.4 has also taken the same stand and sought to dismiss the claim petition.

6. The Tribunal has framed the following three issues originally:

1. Whether the accident occurred due to rash and negligent driving of the driver of car bearing No. AP 7 T 3254?
2. Whether the petitioners are entitled to compensation and if so, to what amount?
3. To what relief?

Later, the Tribunal has framed the following additional issue:

Whether the accident occurred due to negligent parking by the driver of the lorry No. AP 37 T 2627?

7. During enquiry, petitioner No.1 examined himself as P.W.1 and marked Exs.A1 to A4; whereas, on behalf of the respondents, R.W.1 was examined and copy of the insurance policy of the car was marked as Ex.B1.

8. Issue No.1 and additional issue taken up together by the Tribunal and basing on the evidence recorded by both, oral and documentary, through P.W.1 and Exs.A1 to A4 and Ex.B1, held that due to rash and negligent driving of the car driver, the accident had occurred and, thus, recorded finding thereon in favour of the petitioners. On issue No.2, holding that the deceased was only a housewife and the petitioners cannot be construed as dependants and taking the age of the deceased as 35 years, granted Rs.50,000/- towards compensation for the death of the deceased, besides granting Rs.10,000/- towards loss of consortium and Rs.2,000/- towards funeral expenses, and, thus, granted a total sum of Rs.62,000/- with interest at 9% per annum from the date of petition till the date of deposit, against respondent Nos.1 and 2, while dismissing the claim petition against respondent Nos.3 and 4.

9. It appears no appeals have been preferred by respondent Nos.1 and 2.

10. No representation for the appellants. Heard Sri S.A.V.Ratnam, learned counsel for respondent No.2, and Sri S.V.R.Subramanyam, learned counsel for respondent No.4. The appeal was dismissed for default against respondent Nos.1 and 3,

who are the owners of the car and lorry, respectively, which is of no consequence.

11. So far as the finding recorded by the Tribunal holding the responsibility on respondent Nos.1 and 2 is concerned, the same does not warrant interference, as on account of the rash and negligent driving of the car driver, the accident had occurred and, thus, the same is maintained.

12. Concerning determination of compensation, the Tribunal, though observed the stand of the petitioners that the deceased was earning Rs.4,000/- per month, has not expressed any view, but simply granted Rs.50,000/- towards compensation, holding that she was not an earning member. That approach of the Tribunal appears to be improper, keeping in view the settled proposition of law that towards domestic services, notional income has to be fixed. Since the age of the deceased was 35 years, the relevant multiplier would be "15". Even if Rs.2,000/- is taken as the monthly income of the deceased for the services rendered by her to her family, approximately it would be around Rs.2,00,000/-, claimed by the petitioners, and the same is acceded to.

13. Thus, the petitioners are entitled to a sum of Rs.2,00,000/- (Rupees two lakhs) including the conventional sum, as against Rs.62,000/- granted by the Tribunal, towards compensation and the same is, accordingly, granted. So far as the rate of interest is concerned, the Tribunal granted interest at 9% per annum and the same is maintained on the amount granted by the Tribunal, but on the enhanced amount, interest at 7.5% per annum is granted from the date of petition till realisation in view of the decision of the Hon'ble Apex

Court in **Rajesh and others v. Rajbir Singh and others**^[1].

14. Accordingly, the appeal is allowed modifying the order passed by the Tribunal by enhancing the compensation, as indicated above, and confirming the same in all other respects. There shall be no order as to costs.

15. As a sequel thereto, miscellaneous applications, if any pending in the instant appeal, stand disposed of.

JUSTICE A.SHANKAR NARAYANA

18.03.2016
v v

^[1] 2013 ACJ 1403